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Lau Yong Ying v Public Prosecutor & Ors

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HIGH COURT (SHAH ALAM) — ORIGINATING SUMMONS NO BA-24NCVC-78–01 OF 2018
AZIMAH OMAR J
6 JUNE 2018

C

Civil Procedure — Judgments and orders — Vesting order — Setting aside — Plaintiff filed originating summons to nullify forfeiture and vesting order granted by High Court — Whether plaintiff's originating summons ought to be summarily dismissed on grounds that it was scandalous, frivolous and vexatious; and abuse of process of court — Whether originating summons filed was tactical maneuver — Whether plaintiff's action barred by res judicata — Whether plaintiff had locus standi — Whether court had jurisdiction to entertain plaintiff's action

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Pursuant to s 51(1) of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities 2011 ('the AMLATFA'), the first defendant had issued notice of seizure against one Haris Afzal to seize a property located in Kajang, Selangor ('the said property'). The first defendant then initiated a criminal application in the Shah Alam High Court pursuant to ss 56(1) and 61(2) of the AMLATFA. The High Court had allowed the said application and granted the forfeiture and vesting order ('AMLA order') dated 27 October 2011. The directions of the AMLA order were, inter alia, to vest the ownership, right and the interest of the said property to the Bank of Punjab ('the second defendant'). The second defendant subsequently filed an originating summons ('OS 1580') in the Shah Alam High Court against the plaintiff and three others seeking recovery of the said property on the basis that the second defendant had obtained the AMLA order. The High Court allowed the application and the said property was subsequently transferred to the second defendant. The plaintiff had filed an appeal against the said decision, but the appeal was dismissed by the Court of Appeal. It ought to be noted that an appeal was still pending in the Federal Court. In the present case, the plaintiff had filed an originating summons to nullify the AMLA order ('encl 1'). The issues for determination were: (a) whether the plaintiff's encl 1 ought to be summarily dismissed on the grounds that it was scandalous, frivolous and vexatious; and an abuse of the process of the court for three broad reasons ie tactical maneuver, res judicata and locus; and (b) whether the present court had the jurisdiction to entertain the plaintiff's encl 1.

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Held, dismissing encl 1:

(1) It was crystal clear from the concurrent decisions of the High Court and the Court of Appeal in OS 1580 that the issue of the second defendant's rights to the said property had been ventilated and heard on merits. As a matter of fact, all the dealings and proceedings of the said property after the notice of seizure had been declared null, void and invalid by the High Court and the Court of Appeal. As such, the plaintiff's encl 1 was a pure tactical maneuver by the plaintiff with the intention to circumvent and subvert the concurrent decisions of the courts (see paras 34 & 37).

(2) The plaintiff had opted to challenge the notice of seizure by opposing the second defendant's OS 1580, therefore it was too late in the present case for the plaintiff to set aside the AMLA order. The issues pertaining to provisions of AMLATFA and all dealings and proceedings brought by the plaintiff relating to the said property subsequent to the issuance of the notice of seizure had been ventilated and decided, as such, the plaintiff's encl1 was barred by the principle of res judicata. Until decided otherwise by the Federal Court, the decisions of the High Court and the Court of Appeal must therefore stand and prevail. In addition, the plaintiff had the opportunity to challenge the AMLA order in OS 1580 but failed to do so. Only now, six years after the court granted the AMLA order that the plaintiff sought to challenge the order. Therefore, the plaintiff's encl 1 was a clear abuse of court process (see paras 39–42).

(3) When the AMLA order was granted, the plaintiff did not have any interest or right to the said property. Thus, the plaintiff did not have a locus standi to seek the relief sought in encl 1. Based on the above findings, the plaintiff's encl 1 ought to be summarily dismissed on the grounds that it was scandalous, frivolous and vexatious; and an abuse of the process of the court (see paras 44–45).

(4) The decisions of the High Court and the Court of Appeal in OS 1580 were binding on all parties until it is decided otherwise by the Federal Court. Further, undisputedly the Criminal Division of the Shah Alam High Court had the power to grant the AMLA order pursuant to the provision of the AMLATFA. The AMLA order was also regularly issued and validly made. As such, the present court would have no jurisdiction to entertain the plaintiff's encl 1 (see paras 46–47).

[Bahasa Malaysia summary

Menurut s 51(1) Akta Pencegahan Pengubahan Wang Haram, Pencegahan Pembiayaan Keganasan dan Hasil daripada Aktiviti Haram 2001 ('Akta'), defendan pertama telah mengeluarkan notis penyitaan terhadap seorang Haris Afzal untuk menyita harta yang terletak di Kajang, Selangor ('harta tersebut'). Defendan pertama kemudian memulakan permohonan jenayah di Mahkamah Tinggi Shah Alam menurut ss 56(1) dan 61(2) Akta. Mahkamah Tinggi telah membenarkan permohonan tersebut dan membenarkan perintah

pelucuthakkan dan letakhak ('perintah AMLA') bertarikh 27 Oktober 2011. Arahan perintah AMLA adalah, antara lain, untuk memberi pemilikan, hak dan kepentingan harta tersebut kepada Bank Punjab ('defendan kedua'). Defendan kedua kemudian memfailkan saman pemula ('OS 1580') di Mahkamah Tinggi Shah Alam terhadap plaintif dan tiga orang lain memohon pengambilan semula harta tersebut atas dasar bahawa defendan kedua telah memperoleh perintah AMLA. Mahkamah Tinggi membenarkan permohonan itu dan harta tersebut kemudiannya dipindahmilik kepada defendan kedua. Plaintif telah memfailkan rayuan terhadap keputusan tersebut, tetapi rayuan itu ditolak oleh Mahkamah Rayuan. Perlu diingatkan bahawa rayuan masih belum selesai di Mahkamah Persekutuan. Dalam kes ini, plaintif telah memfailkan saman pemula untuk membatalkan perintah AMLA ('lampiran 1'). Isu-isu untuk penentuan adalah: (a) sama ada lampiran 1 plaintif patut ditolak dengan alasan bahawa ia adalah skandal, remeh dan membosankan; dan penyalahgunaan proses mahkamah atas tiga sebab utama iaitu manuver taktikal, res judicata dan locus; dan (b) sama ada mahkamah ini mempunyai bidang kuasa untuk mempertimbangkan lampiran 1 plaintif.

Diputuskan, menolak lampiran 1:

(1) Adalah jelas dari keputusan serentak Mahkamah Tinggi dan Mahkamah Rayuan di OS 1580 bahawa isu hak defendan kedua terhadap harta tersebut telah dikemukakan dan didengar dengan merit. Hakikatnya, semua urusan dan prosiding harta tersebut selepas notis penyitaan telah diisytiharkan terbatal, tidak sah dan cacat oleh Mahkamah Tinggi dan Mahkamah Rayuan. Oleh itu, lampiran 1 plaintif adalah jelas manuver taktikal oleh plaintif dengan niat untuk mengelakkan dan menghalang keputusan serentak mahkamah-mahkamah (lihat perenggan 34 & 37).

(2) Plaintif telah memilih untuk mencabar notis penyitaan dengan membantah OS 1580 defendan kedua, oleh itu sudah terlambat dalam kes ini bagi plaintif untuk mengetepikan perintah AMLA. Isu-isu yang berkaitan dengan peruntukan-peruntukan Akta dan semua urusan dan prosiding yang dibawa oleh plaintif yang berkaitan dengan harta tersebut selepas pengeluaran notis penyitaan telah dikemukakan dan diputuskan, oleh itu, lampiran 1 plaintif telah dihalang oleh prinsip res judicata. Sehingga keputusan sebaliknya yang ditentukan oleh Mahkamah Persekutuan, keputusan Mahkamah Tinggi dan Mahkamah Rayuan mesti dengan itu berdiri dan diguna pakai. Di samping itu, plaintif mempunyai peluang untuk mencabar perintah AMLA di OS 1580 tetapi gagal berbuat demikian. Hanya sekarang, enam tahun selepas mahkamah memberikan perintah AMLA bahawa plaintif mencuba untuk mencabar perintah tersebut. Oleh itu, lampiran 1 plaintif adalah penyalahgunaan proses mahkamah yang jelas (lihat perenggan 39–42).

(3) Apabila perintah AMLA diberikan, plaintif tidak mempunyai apa-apa

kepentingan atau hak kepada harta tersebut. Oleh itu, plaintif tidak mempunyai locus standi untuk memohon relief yang dipohon dalam lampiran 1. Berdasarkan penemuan di atas, lampiran 1 plaintif sepatutnya ditolak dengan alasan bahawa ia adalah skandal, remeh dan membosankan; dan penyalahgunaan proses mahkamah (lihat perenggan 44–45).

(4) Keputusan Mahkamah Tinggi dan Mahkamah Rayuan di OS 1580 mengikat semua pihak sehingga keputusannya ditentukan sebaliknya oleh Mahkamah Persekutuan. Selanjutnya, tidak dapat dinafikan bahawa Bahagian Jenayah Mahkamah Tinggi Shah Alam mempunyai kuasa untuk memberikan perintah AMLA menurut peruntukan Akta. Perintah AMLA juga sering dikeluarkan dan dibuat dengan sah. Oleh itu, mahkamah ini tidak mempunyai bidang kuasa untuk mempertimbangkan lampiran 1 plaintif (lihat perenggan 46–47).]

Notes

For cases on vesting order, see 2(3) *Mallal's Digest* (5th Ed, 2017 Reissue) paras 5883–5884.

Cases referred to

Badiaddin bin Mohd Mahidin & Anor v Arab Malaysian Finance Bhd [1998] 1 MLJ 393, FC (refd)

CIMB Investment Bank Bhd (previously known as Commerce International Merchant Bankers Bhd) v Metroplex Holdings Sdn Bhd [2014] 6 MLJ 779; [2014] 9 CLJ 1012, FC (refd)

Government of Malaysia v Lim Kit Siang [1988] 2 MLJ 12; [1988] 1 CLJ Rep 63, SC (refd)

Hartecon JV Sdn Bhd & Anor v Hartela Contractors Ltd [1996] 2 MLJ 57; [1997] 2 CLJ 104, CA (refd)

Ikatan Kelab-Kelab Melayu Negeri Pulau Pinang (499-Penang) (suing through its President, Dato' Seri Hj Mohd Yussof Latiff) & Ors v Yayasan Bumiputra Pulau Pinang & Ors and another appeal [2014] 1 MLJ 27; [2013] 9 CLJ 941, FC (refd)

Jabatan Kastam Diraja Malaysia & Ors v Apple International Co Ltd (Japan) [2017] 3 MLJ 421, CA (refd)

Kekatong Sdn Bhd v Bank Bumiputra (M) Bhd [1998] 2 MLJ 440, CA (refd)

Kerajaan Malaysia v Mat Shuhaimi bin Shafiei [2018] 2 MLJ 133; [2018] 3 CLJ 1, FC (refd)

MacQuire (Malaysia) Sdn Bhd v HSBC Bank Malaysia Bhd & Anor and another appeal [2007] 7 MLJ 139, CA (refd)

Malaysian Bar v Tan Sri Dato Abdul Hamid bin Omar [1989] 2 MLJ 281; [1989] 1 CLJ Rep 92, SC (refd)

Malpac Capital Sdn Bhd v Yong Toi Mee & Ors and another appeal [2017] 1 MLJ 262; [2016] 8 CLJ 613, CA (refd)

Muniandy a/l Thamba Kaundan & Anor v D & C Bank Bhd & Anor [1996] 1 MLJ 374, FC (refd)
PP v Abdul Aziz Abdullah [2010] MLJU 2231; [2011] 6 CLJ 700, HC (refd)
Tan Sri Haji Othman Saat v Mohamed bin Ismail [1982] 2 MLJ 177, FC (refd)

Legislation referred to

Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities 2001 ss 44, 50(1), 51, 51(1), 54, 56(1), 57(1), 61(2)
Interpretation Acts 1948 and 1967 s 54(1)(a)
National Land Code s 340(2)(b), (2)(c)

Americk Sidhu (Americk Sidhu) for the plaintiff.
Atiqah Liyana (Khairul Nizam with her) (Attorney General's Chambers) for the first defendant.
Lambert Rasa Ratnam (Bahari Yeow Tien Hong and Nurul Aisyah bt Hassan with him) (Lee Hishammuddin Allen & Gledhill) for the second defendant.
Mohd Syahrizal bin Zakaria (Selangor State Legal Advisor's Office) for the third defendant.
Gurmeet Kaur (Shaikh David & Co) for the fourth defendant.

Azimah Omar J:

INTRODUCTION

[1] This originating summons (encl 1) filed by the plaintiff pertains to a forfeiture and vesting order dated 27 October 2011 made under the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities 2001 ('the AMLATFA') in respect of a bungalow house bearing the address of No 41, Persiaran Cinta Alam, Lot 146, Country Heights, Kajang, Selangor, in Lot 21819, Geran 222376 Bandar Country Height, Daerah Ulu Langat, Selangor Darul Ehsan ('the said property').

THE BACKGROUND FACTS

[2] The background facts revolving the forfeiture and vesting order ('AMLA order') dated 27 October 2011 are as follows:

(a) prior to the said AMLA order being granted, on 30 November 2009, the Royal Malaysian Police had issued a freezing order against the said property pursuant to s 44 of the AMLATFA on the premise that there are reasonable grounds to suspect that an offence under the AMLATFA has been committed or about to be committed;

(b) on 15 February 2010, pursuant to s 51(1) of the AMLATFA, the first defendant (*pendakwa raya* — 'PP') had issued a notice of seizure against a person by the name of Haris Afzal s/o Sheikh Muhammad by Afzal (a

Pakistani national holding passport BK 1512321) to seize the said property;

(c) subsequent to the seizure of the said property, on 31 January 2011, the first defendant ('the PP') had initiated a criminal application (Criminal Application No 44–17 of 2011) in the Shah Alam High Court pursuant to ss 56(1) and 61(2) of the AMLATFA;

(d) the Shah Alam High Court had on 27 October 2011 allowed the first defendant's criminal application and granted the AMLA order. Among the directions under AMLA order granted on 27 October 2011 was to vest the ownership, right and the interest of the said property to the Bank of Punjab ('the second defendant');

(e) having obtained the vesting order, on 5 December 2012 the second defendant had taken out an Originating Summons (No 24–1580–12 of 2012) in the Shah Alam High Court ('OS 1580') against five defendants namely: (i) Lee Kam Soon; (ii) Ewe Chooi Lian; (iii) Lau Yong Ying ('the plaintiff'); (iv) Tetuan LH Lee & Co; and (v) Pendaftar Hakmilik Pejabat Tanah dan Galian Selangor ('the third defendant') seeking recovery of the said property on the basis that the second defendant obtained the earlier vesting order in the Criminal Application No 44–17 of 2011;

(f) on 12 May 2015, the Shah Alam High Court had allowed the second defendant's originating summons and granted the second defendant, the declaratory reliefs and orders it had sought for;

(g) pursuant to the order dated 12 February 2015, the said property was subsequently transferred to the second defendant;

(h) dissatisfied with the decision, the plaintiff then had appealed against the decision of the Shah Alam High Court dated 12 February 2015; and

(i) however, the plaintiff's appeal had been dismissed by the Court of Appeal on 30 September 2016.

[3] It is also pertinent to set out the brief facts on how the plaintiff became the registered owner of the said property prior to it being transferred to the second defendant by virtue of the High Court's order dated 12 February 2015:

(a) the plaintiff in the present case is Lau Yong Ying and she is a real estate agent by profession;

(b) on 18 June 2012, the said property was put up for sale in a public auction held at the Shah Alam High Court. The plaintiff had successfully bid for the said property at a purchase price of RM3.51m. Upon the successful bid, the plaintiff had paid a deposit of RM351,000. The remaining balance of the purchase price to be paid by the plaintiff stands at RM3,160,000;

(c) to attend to all the formalities of conveyancing requirements and financial arrangements for the remaining balance of the purchase price, the plaintiff had engaged the services of a firm of solicitors known as Messrs HM Lee & Co;

(d) the plaintiff had obtained a banking facility from Alliance Islamic Bank Bhd ('AIBB') to help her in financing the purchase of the said property;

(e) eventually the said property was registered in the plaintiff's name by the Pejabat Tanah dan Galian Negeri Selangor on the 30 October 2012; and

(f) as the purchase of the said of the property was financed by AIBB ('the fourth defendant') a charge was registered over the said property in favour of the fourth defendant.

THE PLAINTIFF'S APPLICATION

[4] The plaintiff, by her originating summons in encl 1, is seeking to challenge the validity of the said AMLA order. In her encl 1, the plaintiff sought, inter alia, for the following orders:

(a) a declaration that the order dated 27 October 2011 of the Shah Alam High Court in Criminal Application No 44–17 of 2011 be held null and void as having been issued without jurisdiction and in breach of the provisions of s 56(1) of the Anti-Money Laundering, Anti-Terrorism Financing and Proceeds of Unlawful Activities 2001 and hence ought to be set aside;

(b) a further declaration and/or order that the order dated 27 October 2011 of the Shah Alam High Court in Criminal Application No 44–17 of 2011 be set aside;

(c) alternatively a declaration that the second defendant unlawfully acquired an interest in said by virtue of an illegal order of the Shah Alam High Court dated 27 October 2011 issued without jurisdiction in Criminal Application No 44–17 of 2011;

(d) an order reinstating title of the said in the name of Lau Yong Ying (NRIC No 770501–05–5546);

(e) an order that the original duplicate issue document of title or any other document of title in the possession of the second defendant and/or their solicitors be delivered up to the third defendant to be cancelled and extinguished;

(f) an order that all lawful documents and records or memorials of the third defendant be rectified to reflect that said property held under Lot 21819,

Geran 222376 Bandar Country Height, Daerah Ulu Langat, Selangor Darul Ehsan is held in the name of Lau Yong Ying (NRIC No 770501–05–5546);

(g) an order that the second defendant do deliver vacant possession of all that said property to Lau Yong Ying (NRIC No 770501–05–5546); and

(h) an order that the second defendant do pay the plaintiff damages to be assessed as per the undertaking provided by the second defendant in Shah Alam High Court Originating Summons No 24–1580–12 of 2012.

THE PLAINTIFF'S CASE

[5] In seeking to nullify the said AMLA order, the plaintiff had questioned the validity of the AMLA order and hinges her case on the following contentions:

(a) the said AMLA order was invalid and illegal as it was granted in breach of the provisions of written law; and

(b) as the said AMLA order was invalid and illegal order, consequentially the vesting order obtained by the second defendant pursuant to the said AMLA order could not have been a valid order. Thus, the transfer of the said property to second defendant is therefore null and void.

[6] The counsel for the plaintiff had submitted that during the course of the appeal in the Court of Appeal, it was revealed for the first time that the public prosecutor ('PP') had filed the forfeiture application in Criminal Application No 44–17 of 2011 pursuant to s 56(1) of the AMLATFA outside the time frame prescribed under the said s 56(1).

[7] According to the counsel for the plaintiff the first defendant here had filed the forfeiture proceedings on 31 January 2011. The freezing order against the said property was issued by the Royal Malaysian Police on 30 November 2009. It is not in dispute here that there is no prosecution in respect of the said property by the PP. In this instance, the PP may apply for said property to be forfeited under s 56(1) of the AMLATFA but such application must be made before the expiry of 12 months from the date of the freeze or seizure.

[8] In the present case, the counsel for the plaintiff had contended the forfeiture proceedings was only initiated by the PP on 31 January 2011 which was outside the 12 months period prescribed under s 56(1). It is therefore argued by the counsel for the plaintiff that the forfeiture proceedings initiated by the first defendant was filed out of time and this was in breach of s 56(1) of the AMLATFA, a fortiori making the said AMLA order obtained illegal and

unlawful and therefore made without jurisdiction rendering the same void and must be set aside.

THE DEFENDANTS' OBJECTIONS

The first defendant (the public prosecutor)'s objection

[9] The first defendant's objection is in twofold:

(a) the plaintiff's contention that the Criminal Application No 44–17 of 2011 for forfeiture filed by the PP was filed out of time was strongly refuted. The criminal application was filed within the time stipulated, thus the AMLA order granted by the High Court was a valid order; and

(b) the plaintiff lacked the locus standi to bring this action and the court in that Criminal Application No 44–17 of 2011 is functus officio after making the order dated 27 October 2011.

The AMLA order is a valid order

[10] It was argued by the first defendant that the criminal application filed by the PP under s 56(1) of the AMLATFA was filed within the time stipulated and the said AMLA order was validly and legally obtained. The criminal application for the said AMLA order initiated by the PP on 30 January 2011 was made pursuant to s 56(1) of the AMLATFA before the 2014 amendment which provides as follows:

> 56 Forfeiture of property when there is no prosecution
>
> (1) Subject to section 61, where in respect of any property frozen or seized under this Act there is no prosecution or conviction for an offence under subsection 4(1) or a terrorism financing offence, the Public Prosecutor may, before the expiration of twelve months from the date of freeze or seizure, apply to a judge of the High Court for an order of forfeiture of that property if he is satisfied that such property had been obtained as a result of or in connection with an offence under subsection 4(1) or a terrorism financing offence as the case maybe, or is terrorist property.

[11] To this contention, the counsel for the first defendant had referred to the case of *Public Prosecutor v Abdul Aziz Abdullah* [2011] 6 CLJ 700.It was stated by Asmabi Mohamad, JC (as she then was) that:

> [22] Proses pembekuan ini telah di ikuti oleh suatu proses penyitaan di bawah sub-s 50(1) Akta. Dalam situasi sebegini pentafsiran sub-s. 56(1) Akta, versi Bahasa Melayu akan membawa maksud yang tidak masuk akal absurd sekiranya tarikh dua belas bulan yang dinyatakan dalam subseksyen itu, yang memberi kuasa kepada pendakwa raya untuk memohon kepada seorang Hakim Mahkamah Tinggi bagi suatu perintah pelucuthakkan harta hendaklah dikira dari kedua-dua tarikh penyitaan dan pembekuan.

Sekiranya itulah yang dihajatkan oleh Akta sewajarnya Parlimen dalam kearifannya akan memperjelaskannya dalam subseksyen berkenaan. Dari segi logiknya tempoh dua belas bulan itu hendaklah diambil kira dari satu tarikh sahaja dan bukan dua tarikh kerana akan wujud situasi di mana tarikh pembekuan tidak sama dengan tarikh penyitaan. Ini membawa maksud pentafsiran teks Bahasa Inggeris adalah lebih logik dan tepat. Walaupun saya faham dalam kes ini menurut s 6 Akta Bahasa Kebangsaan 1963/1967 (Disemak 1971) naskah Bahasa Melayu hendaklah dijadikan naskah yang sahih namun dalam situasi ini terdapat kekeliruan berhubung tarikh manakah yang wajar diambil kira bagi maksud sub-s 56(1) Akta dalam naskhah sahih itu.

[23] Dalam situasi sebegini, pada pandangan mahkamah, kesemua peruntukan yang relevan berkaitan dengan pembekuan dan penyitaan dalam Akta hendaklah dibacakan secara harmoni bagi mengelak pentafsiran yang akan memberi kesan yang tidak masuk akal absurd dan tidak logik. Pembacaan sub-s 56(1) dan 56(3) Akta secara harmoni dengan jelas mencadangkan tempoh dua belas bulan itu hendaklah diambil kira dari tarikh penyitaan kerana jika kedua-dua tarikh itu diambil akan wujud keadaan di mana hanya tarikh terawal iaitu tarikh pembekuan yang wajar diambil kerana jika itulah pentafsirannya, dalam semua keadaan, hanya akan wujud situasi harta dibeku dahulu sebelum dirampas dan bukan sebaliknya. Seperkara lagi sub-s 56(3) Akta, itu sendiri telah memperuntukkan apa-apa harta yang disita dan berkaitan dengan harta itu tiada permohonan dibuat oleh pendakwa raya di bawah sub-s 56(1) hendaklah apabila tamat tempoh dua belas bulan dari tarikh penyitaannya, di lepaskan kepada orang yang daripadanya harta itu disita.

[12] The counsel for the first defendant further submitted that by the reading of the judgment in the case of *Public Prosecutor v Abdul Aziz Abdullah* above and by referring to s 54(1)(a) of the Interpretation Acts 1948 and 1967, the twelve months period prescribed under s 56(1) must not be read to begin from the date of the freezing order being issued. Here, even though the freezing order was issued on 30 November 2009. However, the notice of seizure pursuant to s 50(1) of the AMLATFA to seize the said property was only issued on 15 February 2010.

[13] Therefore, it was contended by the counsel for the first defendant, the 12 months period will on starts to run from the date of notice of seizure namely; at the time the seizure of the said property was effected. In other words, the calculation of the twelve months begins a day after the date of the forfeiture order granted by the court which is on 16 February 2010. It will end on 15 February 2011.

[14] Since the criminal application vide a notice of motion under Criminal Application No 44–17 of 2011 was filed on 31 January 2011, it was filed well within time.

The plaintiff has no locus standi to bring the action and the court is functus officio

[15] It was submitted on behalf of the first defendant that the plaintiff does not have locus standi to bring this action as she was not a party to the Criminal Application No 44–17 of 2011 and the court in that Criminal Application No 44–17 of 2011 is functus officio after making the order dated 27 October 2011.

[16] The counsel for the first defendant had also submitted that in this instance case that there is no breach of natural justice in this matter and that no one can challenge the validity of any seizure or sale of property by virtue of the provisions of s 57(1) of the AMLATFA which provides as below:

> 57 Validity of freeze, seizure or sale.
>
> Where the freeze, seizure or sale of any property has been effected under this Act, the validity of such freeze, seizure or sale, or other form of disposal of such property, or of any destruction of the property in accordance with the provisions of this Act, in consequence of such freeze, seizure or sale, shall not be affected by any objection to it relating to the manner in which the freeze, seizure or sale was effected, or the place at which it was effected, or the person from whom it was effected, or the person to whom any notice of the freeze, seizure or sale was given, or omitted to be given, or any failure to conform to any procedural provision of this Act or of any other written law in effecting the freeze, seizure or sale.

The second defendant (Bank of Punjab)'s objection

[17] The Bank of Punjab ('BOP') had strenuously objected the plaintiff's application and its grounds of objection are primarily as follows:

(a) the plaintiff's originating summons ought to be summarily dismissed on the grounds that it is scandalous, frivolous and vexatious and an abuse of the process of the court for three broad reasons — tactical maneuver; res judicata; and locus; and

(b) this court does not have the jurisdiction to entertain this originating summons or grant the relief sought by the plaintiff.

First objection

[18] To support its objections, the second defendant had set out in detail the chronology and sequence of events transpired in the Originating Summons 24–1580 of 2012 ('OS 1580') which are as follows:

(a) the second defendant had commenced OS 1580 on 5 December 2012 in the Shah Alam High Court against the plaintiff ('the purchaser') and three other defendants for amongst others, a declaration that any dealing in respect of the property subsequent to the notice of seizure of the

property dated 15 February 2010 and the AMLA vesting order vesting the property in the second defendant are illegal and void;

(b) on 12 May 2015, the Shah Alam High Court allowed the second defendant's OS 1580;

(c) pursuant to the order obtained by the second defendant in OS 1580, on 25 May 2015, the registration of the purchaser as proprietor of the said property and the charge registered on the property were cancelled. The said property was then registered under the second defendant's name;

(d) the purchaser of the said property (the plaintiff), the Registrar of Pejabat Tanah dan Galian Selangor (the third defendant) and the chargee, Alliance Islamic Bank Bhd (the fourth defendant) had appealed against the decision of the High Court at the Court of Appeal;

(e) on 30 September 2016, the Court of Appeal unanimously dismissed the appeals. The plaintiff and the Registrar of Pejabat Tanah dan Galian Selangor were granted leave to appeal to the Federal Court. The appeal is fixed for hearing before the Federal Court on 26 April 2018; and

(f) the High Court and the Court of Appeal grounds of judgment are available.

The third defendant (Pendaftar Hakmilik Pejabat Tanah dan Galian Selangor)

[19] The third defendant stands on the position that the third defendant was only carrying out his statutory duty under the National Land Code ('the NLC'). The plaintiff has no case against the third defendant.

The fourth defendant (Alliance Islamic Bank Bhd)

[20] The fourth defendant claimed that it is only a nominal defendant in this originating summons. The fourth defendant in the present action is the bona fide registered chargee against the said property.

ISSUES FOR THIS COURT'S DETERMINATION

[21] Having set out the plaintiff's case and objections raised by the defendants, is this court's considered view that issues to be determined by this court in the plaintiff's originating summons ('encl 1') are these:

(a) whether the plaintiff's encl 1 ought to be summarily dismissed on the grounds that it is scandalous, frivolous and vexatious and an abuse of the process of the court for three broad reasons — tactical maneuver; res judicata; and locus; and

(b) whether this court has the jurisdiction to entertain the plaintiff's encl 1.

THIS COURT'S FINDING

[22] The counsel for the plaintiff had attempted to put the plaintiff's case within the ambit of *Badiaddin*'s case by submitting that in the present case the AMLA order granted by the court on 27 October 2011 was clearly in breach of s 56(1) of the AMLATFA (as the criminal application on which the said AMLA order was obtained, was filed by the PP out of time). Consequentially, according to the counsel for the plaintiff this renders the AMLA order to be an illegal order. As such, this court has inherent power to set aside an illegal order.

[23] The counsel for the plaintiff had also argued that the decision in the case of *Public Prosecutor v Abdul Aziz Abdullah* should not be accepted as the true interpretation of the twelve months prescribed under s 56(1) of the AMLATFA. The decision in *Public Prosecutor v Abdul Aziz Abdullah* as the case was decided in 2011 before s 56(1) was amended in 2014.

[24] It was further argued by the counsel for the plaintiff that when s 56(1) was amended in 2014, the issue of interpretation when does the twelve months period begins had been clarified. The amended s 56(1) reads as follows:

> (1) Subject to section 61, where in respect of any property seized under this Act there is no prosecution or conviction for an offence under subsection 4(1) or a terrorism financing offence, the Public Prosecutor may, before the expiration of twelve months from the date of seizure, or where there is a freezing order, twelve months from the date of freezing, apply to a judge of the High Court for an order of forfeiture of that property if he is satisfied that such property is ...

[25] With such amendment, it was submitted by counsel for the plaintiff that the meaning set out in the amended provision was the original intention of the Legislature namely; the twelve months period runs from the date of seizure, or when there is a freezing order, twelve months from the freezing order.

[26] At this juncture, it is this court considered view that whether the validity of said AMLA order can be scrutinised by this court, the two issues stated in para 21 must be first determined.

Whether the plaintiff's encl 1 ought to be summarily dismissed on the grounds that it is scandalous, frivolous and vexatious and an abuse of the process of the court for three broad reasons — tactical maneuver; res judicata; and locus.

Tactical maneuver

[27] The counsel for the second defendant had submitted that the plaintiff's originating summons is plainly frivolous, vexatious and an abuse of the process of court on three broad reasons — tactical maneuver; res judicata; and locus.

[28] According to the counsel for the second defendant, the plaintiff's encl 1 is a tactical maneuver by the plaintiff as it was intended to circumvent and subvert the concurrent decision of the High Court and Court of Appeal in the second defendant's OS 1580 and bolster the plaintiff's stance pending her appeal before the Federal Court.

[29] This court must emphasise here that the second defendant had succeeded in its OS 1580 and the issues regarding provisions of AMLATFA had been dealt with by the learned judicial commissioner. Paragraph 12 of the judicial commissioner's grounds of judgment found the following:

> Analysis and Finding
>
> [12] The thrust of the plaintiff's case was that all dealings and proceedings brought by the defendants relating to the subject property subsequent to the issuance of the notice of seizures have clearly contravened the provisions of the AMLAFTA, specifically ss 51 and 54 which led to the said dealings and proceedings being rendered invalid and void under this Act. Having taken into consideration the unequivocal provisions of AMLAFTA adverted to, this was indeed the case in the present instance where the said provisions were blatantly infringed and disregarded by the defendants concerned, save for defendants 3) and 6). As rightly contended, it would be unjust to the plaintiff to be made to suffer the consequences of the fifth defendant negligence and non-compliance with the explicit terms of AMLAFTA which itself amounts to a criminal offence. On the undisputed evidence of the fifth defendant's omission and negligence as elaborated, there was shown clear contravention and defiance of substantive statutory prohibitions and obligations under AMLAFTA. Flowing from this, the only conclusion that could be drawn was that all dealings with the subject property after the issuance of the notice were rendered null and void on the grounds of illegality and lack of jurisdiction.

[30] Pursuant to the above findings, the High Court had amongst others made the following declarations and orders:

(a) a declaration that by reason of the notice of seizure issued pursuant to s 51(1) of the AMLATFA, the proprietor no longer had any legal and beneficial ownership and interests over the land;

(b) a declaration that by reason of the AMLA vesting order in the Criminal Application Suit No 44–17 of 2011, the legal and beneficial ownership and interests in the land was vested in the bank;

(c) a declaration that any dealing with the land subsequent to the notice of seizure and/or AMLA vesting order is a nullity, void and unlawful and liable to be defeated and set aside;

(d) a declaration that service of the writ of summons filed by the original purchasers and the subsequent judgment in default dated 17 September 2010 against the proprietor is a nullity, void and unlawful and liable to be set aside;

(e) a declaration that the writ of seizure and sale and order dated 20 June 2011 and any proceeding consequent upon or subsequent to the WSS order including the auction of the land held in 18 June 2012 is a nullity, void and unlawful and any instruments executed thereto are insufficient and void;

(f) a declaration that removal of the registrar's caveat on the land by the registrar is a nullity, void and unlawful;

(g) a declaration that any title or interest obtained by the purchaser was obtained by means of an insufficient or void instrument, or acquired unlawfully , and ought therefore to be set aside;

(h) an order that the registrar remove and cancel the purchaser's registration over the land and any other instrument that may affect the bank ownership and interest in the land; and

(i) an order that the registrar issue a new land title over the land in favour of the bank.

[31] The decision of the High Court was unanimously affirmed by the Court of Appeal.

[32] The Court of Appeal in affirming the High Court's findings had in paras 38–40 and 42–43 stated as follows:

> [38] Section 51(2) of the AMLATFA provides once the Registrar of Titles has been served with a notice of seizure he must endorse the terms of the notice of seizure on the document of little in respect of the immovable property in the Register at his office:
>
> > The Land Administrator, the Collector of Land Revenue, the Director of Lands and Surveys, the Registrar of Titles of the Registrar responsible for land titles, as the case may be, referred to in subsection (1) shall immediately upon being served with a notice of seizure under that subsection endorse the terms of the notice of seizure on the document of little in respect of the immovable property in the Register at his office.
>
> [39] The law is crystal clear that where an endorsement of a notice of seizure has been made it shall have the effect of prohibiting all dealings in respect of the immovable property. After such endorsement has been made no dealing in respect of the immovable property shall be registered, regardless whether before or after the issue of such notice or the making of such endorsement. Section 51(3) of the AMLATFA reads:
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> > Where an endorsement of a notice of seizure has been made under subsection (2) the notice shall have the effect of prohibiting all dealings in respect of the immovable property, and after such endorsement has been made no dealing in respect of the immovable property shall be registered, regardless whether it was

effected before or after the issue of such Notice or the making of such endorsement.

[40] We agree with the learned JC that although the Registrar did not endorse in the document of tile it does not invalidate the notice of seizure. Section 54 of the AMLATFA expressly provides that as long as the seizure remains in force any dealings remain null and void:

> (1) Where any property has been seized under this Act, and so long as such seizure remains in force, any dealing effected by any person or between any persons in respect of such property, except any dealing effected under this Act by an officer of a public body in his capacity as such officer, or otherwise by or on behalf of the Federal Government, or the Government of a State, or a local authority or other statutory authority, shall be null and void, and shall not be registered or otherwise be given effect to by any person or authority.

[42] We were in full agreement with the learned JC that by virtue of s 54(1) of the AMLATFA the tile and interest of the third defendant as purchaser is null and void and cannot be registered or given effect to any person as the notice of seizure was served on the registrar furthermore, s 57 of the same Act provides:

> Where the freeze, Seizure or sale of any property has been effected under this Act, the validity of such freeze, seizure or sale, or other form of disposal of such property, or of any destruction of the property in accordance with the provisions of this Act. In consequence of such freeze, seizure or sale, shall not be affected by any objection to it relating to the manner in which the freeze, seizure or sale was effected, or the place at which it was effected, or the person from whom it was effected, or the person whom any notice of the freeze, seizure or sale was given, or omitted to be given, or any other written law in effecting the freeze, seizure or sale.

[43] The AMLATFA vesting order further cemented the prohibition of any dealings in respect of the property. We were of the considered view that the AMLATFA vesting order affecting the property to date still remains in force and unchallenged and is therefore valid, binding and enforceable. Thus, any dealing in respect of the property subsequent to the AMLATFA vesting order is a nullity and unlawful. Therefore, such dealing or transaction must be declared voide, illegal and set aside.

[33] The concurrent decisions of the High Court and the Court of Appeal may be summarised as follows:

(a) all dealings and proceedings involving the land subsequent to the notice of seizure issued by the public prosecutor were in clear contravention of the provisions of AMLA, resulting in the dealings and proceedings being invalid, null and void — ss 51 and 54 of the AMLATFA 2001;

(b) any dealing in respect of the land subsequent to the notice of seizure and the AMLA vesting order is invalid, null, void and unlawful under AMLA and is defeasible, and should be set aside;

(c) the scheme of the registration of the purchaser wasopen to enquiry. The purchaser's title was obtained in contravention of law or through void instruments and is defeasible — s 340(2)(b) and (2)(c) of the NLC;

(d) all dealings in respect of the land by the original proprietors and purchaser on the date of the public auction of the land may be challenged and ought to be set aside as on the date of the auction, the ownership, right and interest in the land had been duly vested in the bank pursuant to the AMLA vesting order; and

(e) the bank is the legal and beneficial owner of the land. The original proprietor could not have transferred ownership, or any rights and interest in the land to the purchaser due to the prior existence of the AMLA vesting order.

[34] It is crystal clear from these concurrent decisions of the courts, that the issue of the second defendant's rights to the said property had been ventilated and heard on merits. As a matter of fact, all of the dealings and proceedings of the said property after the notice of seizure had been declared null, void and invalid by the High Court and the Court of Appeal.

[35] The matter does not end in the Court of Appeal, and an appeal is still pending in the Federal Court.

[36] Having a position where two courts had heard the merits of the second defendant's case and had decided in favour the second defendant and an appeal pending still in the Federal Court, the plaintiff through a back door filed this encl 1, a fresh application to obtain a declaration to nullify the AMLA order purportedly on the ground that criminal application was filed out of time. On this ground, the plaintiff sought for a declaration that the AMLA order obtained from the criminal application is not valid. And basing on the contention of an invalid AMLA order, the plaintiff had also contended the vesting order granted in favour of the second defendant in respect of the said property is also not valid.

[37] And thus, it is this court's judgment that the plaintiff's encl 1 is a pure tactical maneuver by the plaintiff with the intention to circumvent and subvert the concurrent decisions of the courts.

[38] The plaintiff had all the time and opportunity to apply to set aside the AMLA vesting order from the outset. Instead, the plaintiff had chosen to contest the second defendant's OS 1580 on its merits both in the High Court and in the Court of Appeal, on the footing that the plaintiff did not have to set aside the AMLA vesting order. In addition to this, the plaintiff had taken the

issue of the notice of seizure dated 15 February 2010 and all dealings pertaining to the said property subsequent to the notice of seizure, to the Federal Court.

Res judicata

[39] The plaintiff had opted to challenge the notice of seizure by opposing the second defendant's OS 1580, therefore this court opines that it is too late now for the plaintiff to set aside the AMLA vesting order. In this regard, this court refers to the decision of the Court of Appeal in the case of *Malpac Capital Sdn Bhd v Yong Toi Mee & Ors and another appeal* [2017] 1 MLJ 262; [2016] 8 CLJ 613 which, inter alia, had held as follows:

> [17] We are of the view that the above issues had already been adjudicated on the merits. Therefore, they ceased to have independent existence and merged in the final judgment of the Federal Court. The appellant should not be allowed to re-open the matter or to have the court reconsider its conclusion. This is because of the public interest in the finality of litigation. Without finality, the process and cost of litigation would be never ending, as parties would forever be returning to the court to reargue the case and for tactical advantage.
>
> [18] We agree with the written submissions of learned counsel for the first and second respondents that the present round of litigation is unnecessary and is brought about by the appellant refusing to accept the judgment of the Federal Court. This is a repetition of the same ground that the appellant advanced in the review application before the Federal Court. The doctrine of res judicata should be invoked.

[40] Besides, the issues pertaining to provisions of AMLATFA and all dealings and proceedings brought by the plaintiff relating to the said property subsequent to the issuance of the notice of seizure under the AMLATFA had been ventilated and decided, and therefore the plaintiff's encl 1 is also barred by the principle of res judicata.

[41] Until decided otherwise by the Federal Court, the decisions of the High Court and the Court of Appeal must therefore stand and prevail. Any attempt to question the validity of the AMLA vesting order at this juncture must be estopped on the principle of res judicata. To move this court to make a decision reversing the concurrent decisions of the other High Court and Court of Appeal is akin to a back door appeal, and this is verily improper. The proper recourse is to appeal against the decisions. Therein with, until and unless the Federal Court Appeal had ran its course, any proceedings ventilating the same issue prior to the Federal Court Appeal, is an improper back door tactic to challenge the concurrent decisions and this should not at all be allowed.

[42] The plaintiff here having the opportunity to question the AMLA order in OS 1580 had failed to do so but only now sought to challenge the AMLA

order more than six years after it was granted by the court. In this regard, this court has no hesitation to find that the plaintiff's encl 1 is a clear abuse of court process.

[43] In the case of *Kerajaan Malaysia v Mat Shuhaimi bin Shafiei* [2018] 2 MLJ 133; [2018] 3 CLJ 1, the Federal Court held that:

> [41] For reasons which we will set out shortly, we find that the Court of Appeal erred in not holding that encl 1 is an abuse of the process. Indeed, it is clear that the crucial issue as to whether encl 1 is an abuse of the process was not considered at all by the Court of Appeal in its judgment. This must be done by the Court of Appeal, before embarking on the consideration of the merits of the motion. If, upon due consideration, encl 1 is found to be an abuse of the process, then encl 1 could not stand, and the appeal must be dismissed without the need of going to the merits of the substantive motion. The Court of Appeal had considered the issue of res judicata, but not the applicability or otherwise of the doctrine of the abuse of the process. On the law that we have set out at some length, res judicata (in the form of cause of action estoppel or issue estoppel), is separate and distinct from the doctrine of abuse of the process although both rest on the same underlying public interests — namely, that there should be finality in litigation and that a party should not be vexed twice in the same matter (see *Johnson* per Lord Bingham of Cornhill at p 31, *Toronto (City) v CUPE* Local 79, 2003 SCC 63). The abuse of the process doctrine ... 'is untrammelled by the technicalities of estoppel' (see *House of Spring Garden Ltd v Waite* [1990] 2 All ER 990 at p 1000). In *Bradford and Bingley Building Society v Seddon* [1999] 1 WLR 1482 at pp 1490–1491, Auld LJ said:
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> > In my judgment, it is important to distinguish clearly between res judicata and abuse of process not qualifying as res judicata, a distinction delayed by the blurring of the two in the courts' subsequent application of the above dictum (of Sir James Wigram V-C in *Henderson v Henderson* 3 Hare 100). The former, in its cause of action estoppel form, is an absolute bar to relitigation, and in its issue estoppel form also, save in 'special cases' or 'special circumstances': see *Thoday v Thoday* [1964] P 181, 197–198, per Diplock LJ, and *Arnold v National Westminster Bank Plc* [1991] 2 AC 93. The latter, which may arise where there is no cause of action or issue estoppel, is not subject to the same test, the task of the court being to draw the balance between the competing claims of one party to put his case before the court and of the other not to be unjustly hounded given the earlier history of the matter ... Thus, abuse of process may arise where there has been no earlier decision capable of amounting to res judicata (either or both because the parties or the issues are different) for example, where liability between new parties and/or determination of new issues should have been resolved in the earlier proceedings. It may also arise where there is such an inconsistency between the two that it would be unjust to permit the later one to continue.

A Locus standi

[44] This court is in total agreement with the counsel for second defendant that the plaintiff does not have a locus to seek the relief sought in this originating summons on the following grounds:

B

(a) the plaintiff did not have any interest or right to the said property when the AMLA vesting order was granted more than six years ago. The AMLA vesting order was granted on 27 October 2011. The plaintiff became the registered owner of the said property via the invalid dealings on 30 October 2012. Clearly, on the facts and circumstances of this case, the plaintiff did not have any right or interest over the said property which is the subject matter of the AMLA order as of 27 October 2011, the date it was made. When the AMLA order was granted, the plaintiff's purported right was never in existence at all. And thus, there could not have been any interest or right for the plaintiff to protect or to arm her with necessary locus to initiate the present originating summons (see: *Ikatan Kelab-Kelab Melayu Negeri Pulau Pinang (499-Penang) (suing through its President, Dato' Seri Hj Mohd Yussof Latiff) & Ors v Yayasan Bumiputra Pulau Pinang & Ors and another appeal* [2014] 1 MLJ 27; [2013] 9 CLJ 941 (FC); *Government of Malaysia v Lim Kit Siang* [1988] 2 MLJ 12; [1988] 1 CLJ Rep 63 (SC); *Tan Sri Haji Othman Saat v Mohamed bin Ismail* [1982] 2 MLJ 177 (FC); *Jabatan Kastam Diraja Malaysia & Ors v Apple International Co Ltd (Japan)* [2017] 3 MLJ 421 (CA); *Malaysian Bar v Tan Sri Dato Abdul Hamid bin Omar* [1989] 2 MLJ 281; [1989] 1 CLJ Rep 92 (SC)); and

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(b) after six years had passed, what the plaintiff is trying to do now is to challenge the said AMLA order by taking an advantage of the amendment made to s 56(1) of the AMLATFA in 2014 (Anti-Money Laundering and Anti-Terrorism Financing (Amendment) Act 2014) (Act A1467) and claim that the AMLA order was invalid by hinging on the twelve months period should be calculated from the date of freezing order. It is utterly obvious that the plaintiff is attempting to move this court to re-visit the said AMLA order made six years ago whereas in fact, the said AMLA order was validly obtained in accordance to the legal position of the law at that material time. This must not be allowed and the plaintiff's application would tantamount to a clear case of abuse of court process.

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[45] Considering the abovementioned reasons, the plaintiff's originating summons ought to be summarily dismissed on the grounds that it is scandalous, frivolous and vexatious and an abuse of the process of the court.

Whether this court has the jurisdiction to entertain or to hear the plaintiff's enclosure

[46] This court must emphasise here that the decision of the High Court and Court of Appeal in the OS 1580 are binding on all parties until it is decided otherwise by the Federal Court. Furthermore, undisputedly the Criminal Division of the Shah Alam High Court had the power to grant the AMLA vesting order pursuant to the provision of AMLATFA. This court must also emphasise that the AMLA vesting order was regularly issued and validly made. There is not a shred of evidence to show the AMLA vesting order contravenes or defies a substantive statutory prohibition.

[47] As such, this court would have no jurisdiction to entertain the plaintiff's encl 1 (see: *Hartecon JV Sdn Bhd & Anor v Hartela Contractors Ltd* [1996] 2 MLJ 57; [1997] 2 CLJ 104 (CA)).

[48] It is settled law that as a matter of general law, in the absence of fraud, one branch of the High Court cannot set aside a final order regularly obtained from another branch of the High Court. The only exception is this. A High Court may set aside an order of another branch where the order is in breach of natural justice, or contravenes any written law so as to render the order null and void on ground of illegality or lack of jurisdiction. However, this exception only applies to contravention of a substantive written law. It does not apply to contravention of a procedural requirement of any written law.

(See: *Badiaddin bin Mohd Mahidin & Anor v Arab Malaysian Finance Bhd* [1998] 1 MLJ 393 (FC); *CIMB Investment Bank Bhd (previously known as Commerce International Merchant Bankers Bhd) v Metroplex Holdings Sdn Bhd* [2014] 6 MLJ 779; [2014] 9 CLJ 1012 (FC); *Muniandy a/l Thamba Kaundan & Anor v D & C Bank Bhd & Anor* [1996] 1 MLJ 374 (FC); *Kekatong Sdn Bhd v Bank Bumiputra (M) Bhd* [1998] 2 MLJ 440 (CA); *MacQuire (Malaysia) Sdn Bhd v HSBC Bank Malaysia Bhd & Anor and another appeal* [2007] 7 MLJ 139 (CA)).

[49] Based on the above mentioned reasons, the plaintiff's originating summons is unconceivable, unsustainable and wholly outside the jurisdiction of this court.

CONCLUSION

[50] In the circumstances, this court hereby dismisses the plaintiff's originating summons (encl 1) with costs of RM5,000 each to first defendant (PP) and to the second defendant (the Bank of Punjab). Other than that, costs of RM1,000 to the third defendant. There will be no order as to costs in respect of fourth defendant.

Enclosure 1 dismissed.

Reported by Dzulqarnain Ab Fatar